because, in his opinion, the gift over in the event of the first absolute taker dying intestate or childless or under 21, must be read as if either the first or second "or" was "and," and so reading the devise the event had not happened, and, therefore, the gift over did not take effect. This rule of construction the learned judge remarks is based on a presumed intention on the part of the testator to benefit the children, if any, of the first taker, which would be defeated if he died under twenty-one, leaving children, and the word "or" were construed disjunctively.—Canada Law Journal for October.

Sunday Law Does Not Prohibit Baseball.—Defendant in Territory *v.* Davenport, 124 Pacific Reporter, 795, was charged with having violated the Sunday law by engaging in a game of baseball. The law prohibited persons from engaging in any sports, or in horse racing, cock fighting, etc., on Sundays. The Supreme Court of New Mexico holds that baseball, so long as it is conducted and carried on in a harmless and proper manner, free from rowdyism, gambling, and immorality, does not come within sports prohibited by the statute. The court says: "What could be more restful or helpful to the man who spends his week in an office or a close shop than to engage in an invigorating, clean, and wholesome exercise, such as baseball, on this day. Baseball is essential and natural in the nature of amuse ment, both for the participants and spectators, and is far removed from the ordinary meaning of the word 'labor.'"

Cruelty to Animals.—Does cruelty to turtles fall within the statute prohibiting cruelty to animals? The answer is found in People *v.* Downs, 136 New York Supplement, 440. Some time in March, 1911, sixty-five green turtles were shipped from Cuba on a steamship with their fins or flippers perforated and tied together on each side by means of rope passing through the perforation. Each of these turtles was placed on its back or shell on the deck of the steamer, in which position it was permitted to remain until the ship reached New York. The captain of the steamship was then prosecuted under the penal law of New York for cruelty to animals, the charge being that he had caused these turtles unnecessary and unjustifiable pain and suffering while in transit. The first inquiry is, Is a turtle an animal? The statute of New York defines an animal as not including the human race, but every other living creature. Notwithstanding that a turtle is a species of reptile, the court holds that a turtle is included in this definition. The next question taken up is, Was unjustifiable pain inflicted? The City Magistrate's Court comments: "Hogs have the nose perforated and a ring placed in it; ears of calves are similarly treated; chickens are crowded into freight cars; cod fish is taken out of the waters and thrown into barrels of ice and sold on the market as 'live cod'; eels have been known to squirm

in the frying pan; and snails, lobsters, and crabs are thrown into boiling water. Irrespective of the devious means that might be adopted to destroy life before these cruelties are perpetrated upon them, still no one has raised a voice in protest. * * * The Emperor Augustus nearly exterminated peacocks to regale himself in Rome with their brains. Today the world would hold their death unjustifiable. Then again juries and magistrates of different localities, race, or education, with varying ideas of taste and cuisine, may hold widely divergent ideas as to whether the improved flavor of lobsters boiled alive makes such torture 'justifiable.'" The court concludes that the question was for the jury. It is ordered that the captain be committed to the warden and keeper of the city prison until he give bail.

Note.—See Va. Code, § 3796a.

Payment under Mistake of Fact—Recovery of Money Paid by Mistake—Money Had and Received—Liability of Payee for Money Paid by Mistake.—Baylis *v.* Bishop of London (1912), 2 Ch. 318, is a case deserving of attention. A clergyman of the Church of England having been adjudicated bankrupt, on the application of the trustee in bankruptcy the Bishop of London made a sequestration whereby he appointed his secretary sequestrator of the bankrupt's benefice and directed him to collect and receive the emoluments thereof. Pursuant to this order the sequestrator demanded and received from the plaintiffs sum of money as tithe rent charge in respect of property of which they had been, but had ceased to be lessees. In forgetfulness of the fact that they had ceased to be lessees and were consequently no longer liable for the rent charge they paid it to the sequestrator, who duly accounted for it to the bishop, who, after paying thereout the stipend of the curate and other outgoings, handed over the balance to the trustee in bankruptcy. On behalf of the bishop it was contended that the mistake amounted to a mistake in law and, therefore, the action would not lie; and that even if the mistake were one of fact, the bishop being in effect in a similar position to a sheriff and having, in good faith and without notice, paid the money over to third parties was not liable; but Neville, J., held that the payment was made under a mistake of fact, and that the bishop was liable to refund it, and that he was in the position of a principal and not a mere agent.—Canada Law Journal for October, 1912.